IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICKY COLEMAN, STANLEY E. BATES, et al,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 02-cv-08881
	:	
TEXTRON, INC.,	:	
TEXTRON LYCOMING, and AVCO	:	
CORPORATION et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

Green, S.J. **March 28, 2005**

Presently before the court is Defendants' Motion for Summary Judgment and the responses thereto. For the reasons set forth below, Defendants' Motion for Summary Judgment will be granted in its entirety.

I. FACTUAL AND PROCEDURAL BACKGROUND

Ricky Coleman ("Coleman") and Stanley E. Bates ("Bates"), (hereinafter collectively known as "Plaintiffs"), two African-American men, brought this action against Avco Corporation ("Avco") and its unincorporated, operating division, Textron Lycoming ("Lycoming"), on various race-based claims, i.e., race discrimination, hostile work environment, and retaliation under Title VII of the Civil Rights Acts of 1964 and 1991, 42 U.S.C. Section 2000e et seq. and Pennsylvania Human Relations Act, 43 P.S. 956 et seq.

Plaintiffs are currently employed at Lycoming, a manufacturer of piston aircraft engines. Coleman works as an Assembly Inspection Leader, while Bates works as an Assembly Engine Only Operator. Lycoming has a long existing practice of hiring, laying off, and then rehiring workers as needed. Plaintiffs have been hired, laid off, and rehired repeatedly during their time at Lycoming. In 2001, Lycoming and the National Labor Relations

Board ("NLRB") entered into a settlement agreement ("Settlement Agreement") to resolve unfair labor practice charges relating to Lycoming's outsourcing of parts production. Pursuant to the Settlement Agreement, Lycoming paid some but not all of its employees settlement awards. Bates received an award but Coleman did not. Plaintiffs' Complaint allege the following: First, Plaintiffs contend that Lycoming racially discriminated against them by favoring white co-workers when it hired, fired, and promoted employees. Second, Plaintiffs allege that Lycoming racially discriminated against them in paying settlement awards under the 2001 Settlement Agreement. Coleman alleges that Lycoming discriminated against him by not giving him an award, while Bates contends that Lycoming should have given him a bigger award.

Coleman's work history at Lycoming consists of the following: He began working at Lycoming on January 22, 1990. He has been repeatedly laid off and rehired during his tenure at Lycoming. Specifically, he was laid off on: May 26, 1991, November 3, 1991, October 18, 1994, December 29, 1995, and July 21, 1997.

After their 1991 layoffs, Coleman and Jim Crawford, a white employee, filed grievances claiming that based on their qualifications, they should have been able to bump less senior employees and maintain their jobs. Lycoming and their union settled both employees' grievances in 1998. Coleman received $450, which was more than Crawford received.

Bates's work history consists of the following: Bates began working at Avco, the parent company, on February 5, 1979. He has been employed by the subsidiary, Lycoming since 1985. Like Coleman, he has been repeatedly laid off and rehired during his tenure with co-defendants. Specifically, he was laid off on September 7, 1979, July 7, 1991, November 24, 1991, November 1, 1994, December 29, 1995, July 27, 1997, and November 17, 2001.

On December 4, 2002, Plaintiffs filed a Complaint with this court. Coleman claims that he was subjected to a hostile work environment. He contends that Lycoming discriminated against him by: (1) unfairly laying him off; (2) repeatedly processing and

administering his grievances inadequately; (3) denying him sufficient overtime; (4) denying him proper training; (5) unfairly disciplining him; (6) providing him inadequate support; (7) failing to provide him with proper work materials; and (8) unfairly denying him any portion of a monetary settlement.

In the Complaint, Bates also claims that he was subjected to a hostile work environment. Bates further alleges that Lycoming discriminated against him by: (1) unfairly laying him off; (2) denying him training; (3) denying him adequate support; (4) excluding him from selection of different jobs, and (5) unfairly denying him a larger portion of a monetary settlement.

II. LEGAL STANDARD

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A party seeking summary judgment must identify the basis for its motion, along with evidence clearly demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catreet, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). Once the moving party has satisfied this requirement, Rule 56(e) of the Federal Rules of Civil Procedure requires the nonmoving party to supply sufficient evidence, not mere allegations, for a reasonable jury to find in the nonmovant's favor. See Oldson v. General Elec. Astrospace, 101 F.3d 947, 951 (3d Cir. 1996). The evidence presented must be viewed in the light most favorable to the nonmoving party. See Anderson, 477 U.S. at 256.

III DISCUSSION

In the instant matter, Defendants move for summary judgment, arguing that: (1) Plaintiffs' claims concerning acts that occurred before March 20, 2001 are time-barred; (2) Plaintiffs cannot establish a hostile work environment claim; (3) Defendants are entitled to summary judgment on Plaintiffs' claims concerning the 2001 Settlement Agreement with the NLRB; (4) Defendants are entitled to summary judgment with respect to any remaining claims of discrimination by Coleman; and (5) Defendants are entitled to summary judgment with respect to any remaining claims of discrimination by Bates.

A. The Collective Bargaining Agreement

Plaintiffs allege that Lycoming continually discriminated against them in its hiring, firing, and promotion. Defendants deny this and claim that they were simply following the procedures agreed upon with the Union in the Collective Bargaining Agreement ("CBA"). The procedure for filling new and open positions is governed by Article VI of the CBA. This section states that active employees should submit written requests to Human Resources for lateral job changes or promotions. Openings in a job classification are offered to the senior employee, whether active or laid-off, who has a valid request for such a job classification on file, provided that the employee has the ability to perform the work required without training and with only reasonable familiarization on how to do the job. In the instant matter, beyond mere allegations, Plaintiffs have provided no evidence that the Defendants failed to follow the CBA, that the CBA was followed in a discriminatory manner, or that the CBA rules were discriminatory. Furthermore, Plaintiffs have provided no specific instances when white employees were favored in hiring, firing, or promotion. Accordingly, summary judgment will be granted against Plaintiffs' discrimination claims.

B. Plaintiffs' claims which occurred before March 20, 2001 are time-barred

Furthermore, Plaintiffs' claims which occurred before March 20, 2001 are time-barred. Pursuant to 42 U.S.C.S. § 2000e-5(e), employment discrimination claims must be filed with a state or local agency within 300 days after the alleged discrimination occurred. See West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995). This is a prerequisite to filing a Title VII civil suit. See id. This 300-day period acts like a statute of limitations. Like a statute of limitations, this filing period is subject to waiver, estoppel, and equitable tolling. See id. One particular equitable exception is the continuing violations theory. See id. This theory permits a plaintiff to bring a Title VII claim for conduct that occurred prior to the 300-day period "if he can demonstrate that the act is part of an ongoing practice or pattern of discrimination of the defendant." Id. To toll the filing period using the continuing violations theory, the plaintiff must establish: (1) that one of the reoccurring acts occurred within the filing period and (2) that the harassment is not isolated or sporadic. See id. at 745.

In the instant matter, Plaintiffs filed their administrative charges of discrimination on January 14, 2002. Under the 300-day filing period, all claims regarding acts that occurred before March 20, 2001 are time-barred, unless a reason to toll the period exists. Plaintiffs have not provided any evidence that would authorize this Court to toll the 300-day filing period. Plaintiffs have presented evidence that there were discriminatory acts which created a hostile workplace prior to March 20, 2001, i.e., racial slurs and the appearance of a hangman's noose. However, neither of them have claimed that they notified the management about these acts. As will be discussed further below, there is no employer liability for co-workers' discriminatory acts if the employer did not know about them. See Knabe v. The Boury Corp., 114 F.3d 407, 410 (3d Cir. 1997). Furthermore, Plaintiffs have failed to identify the dates on which they were allegedly denied a position that they bid on. Plaintiffs also have failed to provide evidence that defendants treated their white co-workers more favorably in their layoffs, recalls, promotions, training, or grievance proceedings prior to March 20, 2001. Moreover, Plaintiffs have failed to

offer evidence that the alleged incidents of discrimination were not isolated or sporadic. Plaintiffs did not even respond to Defendants' time-barred defense. Accordingly, separate and discreet claims which occurred prior to March 20, 2001 are determined to be time-barred.

C. Plaintiffs cannot establish a hostile work environment claim

In order to establish a prima facie hostile work environment claim under Title VII and the PHRA, Plaintiffs must demonstrate: (1) that they suffered intentional discrimination because of their race; (2) that the discrimination was pervasive or regular; (3) that the discrimination detrimentally affected them; (4) that the discrimination would detrimentally affect a reasonable person of the same race in the same position; and (5) the existence of respondeat superior liability. See id. Here, Plaintiffs cannot satisfy the 5th prong of the hostile work environment test - the existence of respondeat superior.

The Third Circuit has held that "an employer is liable for an employee's behavior under a negligence theory of agency if a plaintiff proves that management-level employees had actual or constructive knowledge" of the hostile work environment and failed to take remedial action. See Knabe, 114 F.3d at 411. In the instant matter, Plaintiffs allege that they were continuously subjected to racial slurs. They also point to the appearance of a hangman's noose at their workplace. This court accepts Plaintiffs' description of their work condition as true. However, there is no evidence that management knew about it. For employers to be liable for hostile remarks, there must be evidence that the employer had knowledge of the discrimination. See id. Here, Plaintiffs have not provided this evidence. Furthermore, the Plaintiffs do not claim that they notified management about the discrimination. Absent complaints to management or other proof of employer knowledge, there can be no liability under the Third Circuit. See Knabe, 114 F.3d at 410. Therefore, Plaintiffs' hostile work environment claims cannot survive summary judgment.

D. Coleman cannot establish discrimination or retaliation claims

Coleman's discrimination and retaliation claims cannot survive summary judgment. Besides allegations, he has provided no evidence to support his claims.

1. Hiring, Firing and, Promotion Practices

A prima facie case of discrimination is established when a plaintiff shows the following: (1) that he is a member of a protected class; (2) that he is qualified for the position; (3) that he was either not hired or fired from that position; and (4) under circumstances that give rise to an inference of unlawful discrimination such as might occur when the position is filled by a person not of the protected class. Jones v. School Dist., 198 F.3d 403, 410 (3d Cir. 1999). Here, Coleman's discrimination claims fail because he cannot satisfy the 4th prong of the test; he cannot demonstrate circumstances that give rise to an inference of unlawful discrimination. Specifically, Coleman: (1) cannot identify any job which he requested but which he failed to receive because Defendant hired a white employee; (2) cannot name any white employees who were awarded jobs instead of him; (3) has failed to provide evidence that Defendants did not follow the collective bargaining agreement in its hiring, laying off, and promotion practices; and (4) has not provided evidence that the collective bargaining agreement was discriminatory. Therefore, discrimination claims based on Lycoming's hiring, laying off, and promotion practices must fail.

2. Coleman's Claim of Discrimination With Respect To The Assignment Of Overtime

Similarly, Coleman's claim that Defendants discriminated against him by denying him overtime fails. Coleman's Complaint contains allegations that Defendants denied him overtime because of his race. However, Coleman has not provided any evidence to support this allegation. Furthermore, in his deposition, he testified that he could not recall

any overtime that he was denied. Accordingly, Coleman cannot establish a claim of discrimination regarding the assignment of overtime.

3. Coleman's Claim of Discrimination Regarding his September 2001 Reprimand Fails As A Matter of Law

Coleman claims that a verbal reprimand that he received on September 23, 2001 was the result of discrimination. Defendants contend that Coleman was given this reprimand because he had failed to get enough work done on an overtime assignment that he accepted. The Union filed a grievance on Coleman's behalf. As a result, the Defendants expunged the September 2001 reprimand from his file on December 5, 2001. In order to establish a claim for discrimination, a plaintiff must show that he has suffered an adverse personnel action, which requires a showing that the conduct at issue is "serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment...." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997) (citations omitted). The reprimand was expunged from Coleman's record and he has not provided evidence that despite this expungement, Defendants held this incident against him. Furthermore, Coleman has not provided evidence which shows that Defendants treated white employees more favorably. Therefore, Coleman's discrimination claim based on his 2001 reprimand must fail.

4. Retaliation

In order to establish a prima facie retaliatory discharge claim under Title VII and the PHRA, a plaintiff must demonstrate: (1) that he was engaged in a protected activity; (2) that he was discharged subsequent to or contemporaneously with such activity; and (3) that a causal link exists between the protected activity and the discharge. See Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). In the instant case, Coleman claims that the Defendants retaliated against him for filing an EEOC charge in 2002. Specifically, he claims that a white co-worker bumped him from his position a year and a half after he filed his EEOC

charge. This claim fails because Coleman admitted in his deposition that the co-worker who bumped him had higher seniority than him and could therefore bump him under the terms of the CBA. Bumping, in and of itself, is not evidence of discrimination by the company because it is part of the hiring process allowed under the CBA. Moreover, the year and a half delay between the protected activity and the bumping cuts against the establishment of a causal link - an essential part of a retaliation claim.

5. Coleman's Other Discrimination Claims

Furthermore, Coleman's claims that Defendants repeatedly processed and administered his grievances inadequately, denied him proper training, provided him with inadequate support, and failed to provide him with proper work materials fail because besides mere allegations, Coleman has failed to provide evidence to support these claims. These claims therefore cannot survive summary judgment.

E. Bates cannot establish claims for discrimination

Defendants are entitled to summary judgment with respect to Bates's claims of discrimination. Specifically, Bates has not provided evidence that Lycoming discriminated against him during his November 17, 2001 layoff or that Lycoming denied him training,

1. Bates's November 17, 2001 Layoff

Bates cannot establish a prima facie case of discrimination with respect to his November 17, 2001 layoff because he cannot demonstrate that similarly situated white employees were not laid off. Specifically, in Bates's deposition, he stated that he did not have facts to prove a race discrimination claim. Furthermore, Bates has not provided evidence that he failed to receive adequate support, or that he was excluded from the selection of different jobs.

2. Bates's other claims

Likewise, Bates has not provided any evidence that Defendants denied him training, denied him adequate support, or excluded him from a selection of different jobs. Therefore, Bates's discrimination claims on these matters cannot survive summary judgment.

F. Defendants are entitled to summary judgment on Plaintiffs' claims concerning the 2001 Settlement Agreement with the NLRB.

Plaintiffs Coleman and Bates claim that they were discriminated against when they were not awarded appropriate back pay pursuant to a 2001 Settlement Agreement between the NLRB and Textron Lycoming that resolved unfair labor practice charges relating to the Company's outsourcing of parts production. However, this claim fails because: Coleman has not demonstrated that he was eligible to receive a settlement payment; Bates has not demonstrated that he was eligible for a larger settlement payment; the Defendants have established a legitimate, non-discriminatory reason for its settlement practices, namely that it followed the terms of the agreed upon Settlement Agreement; and Plaintiffs have offered no evidence that Defendants' proffered reason for Plaintiffs' treatment was pretextual.

Plaintiffs have not provided evidence that the Defendants failed to follow the Settlement Agreement, that the Settlement Agreement was followed in a discriminatory manner, or that the terms of the Settlement Agreement rules were discriminatory. Defendants contend that they were required to prove to the satisfaction of the NLRB the basis for their settlement payments. The criteria used by the Defendants for settlement payments and approved by the NLRB required payment to employees laid off from Department 162 of Textron during December 1995. Coleman, however, has not shown that he worked in this unit during the required period and was therefore eligible. Bates was eligible and did receive a settlement payment. Bates, however, has not shown that the settlement payment that he received was not what was truly due under the settlement agreement. Plaintiffs also do not allege that the NLRB made a mistake by approving the settlement criteria.

Plaintiffs further allege that this Department 162 did not exist and was made up to justify the exclusion of African Americans. Coleman and Bates, however, provide no evidence to support this allegation. However, the fact that there were African-Americans who received settlement payments and there were Caucasians who did not contradicts this argument. Accordingly, summary judgment will be granted against all of Plaintiffs' discrimination claims with regard to the Settlement Agreement.

IV. CONCLUSION

For these reasons, Defendants' Motion for Summary Judgment will be granted in its entirety.

BY THE COURT:

S/_____
CLIFFORD SCOTT GREEN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICKY COLEMAN, STANLEY E. BATES, et al,	:	
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Plaintiffs,	:	
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v.	:	No. 02-cv-08881
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TEXTRON, INC.,	:	
TEXTRON LYCOMING, and AVCO	:	
CORPORATION et al.,	:	
	:	
Defendants.	:	

ORDER

Green, S.J. **March 28, 2005**

AND NOW, this 28th day of March 2005, upon due consideration, **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED** in its entirety.

IT IS FURTHER ORDERED that the Clerk of Court shall close this matter.

BY THE COURT:

S/_____

CLIFFORD SCOTT GREEN